

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JACOB WILLIAM PERUSICH,

Defendant.

CR 20–14–BU–DLC

ORDER

Before the Court is the United States’ Unopposed Motion to Dismiss Without Prejudice. (Doc. 17.) The United States moves this Court, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, for an order dismissing the above-captioned matter without prejudice. (*Id.*) Defendant Jacob William Perusich consents to such dismissal. (*Id.*) For the reasons stated herein, the Court will grant the motion.

The Federal Rules of Criminal Procedure provide that the United States may only dismiss “an indictment, information, or complaint” with leave of court. Fed. R. Crim. P. 48(a). This limitation on prosecutorial discretion exists to prevent “prosecutorial harassment” through “charging, dismissing, and recharging.” *United States v. Weber*, 721 F.2d 266, 268 (9th Cir. 1983) (per curiam). While the precise extent to which a Court may “deny a Government dismissal motion to

which the defendant has consented” is unclear, there is authority for the proposition that denial is warranted “if the motion is prompted by considerations clearly contrary to the public interest.” *Id.* Such considerations include, for example, “the acceptance of a bribe by the prosecutor or the desire to attend a social event instated of appearing in court.” *Id.*

Additionally, “[d]ismissals by the government are generally presumed to be without prejudice . . . unless a contrary intent is clearly expressed.” *United States v. Brown*, 425 F.3d 681, 682 (9th Cir. 2005) (per curiam). Dismissal can also be with prejudice if this Court finds it is sought for an improper purpose. *United States v. W.R. Grace*, 429 F. Supp. 2d. 1207, 1246–47 (D. Mont. 2006). With these principles in mind, the Court finds no reason to deny the United States’ motion in this case. (Doc. 17.)

The United States represents that dismissal is sought because “at this time, public policy and the interests of justice warrant dismissal.” (*Id.* at 2.) The Court finds nothing in the record indicating such dismissal is sought for an improper purpose or that it would be clearly contrary to the public interest. This conclusion is fortified by the fact that Mr. Perusich has no objection to the above-captioned matter being dismissed without prejudice. (*Id.* at 1.) In short, the Court finds no reason to deny the motion or to dismiss the charges with prejudice instead of without prejudice.

Accordingly, IT IS ORDERED that the motion (Doc. 17) is GRANTED.

IT IS FURTHER ORDERED that the trial currently scheduled for January 5, 2021 and all associated deadlines are VACATED. All pending motions, if any, are DENIED as moot.

IT IS FURTHER ORDERED that Indictment (Doc. 1) is DISMISSED without prejudice.

The Clerk of Court is directed to close the case file.

DATED this 16th day of November, 2020.



Dana L. Christensen, District Judge
United States District Court